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The Case for the Shorter Work Day. Supreme Court of the United States. October Term, 1915. *Franklin O. Bunting, Plaintiff in Error, v. The State of Oregon, Defendant in Error.*

Brief for the Defendant in Error. By FELIX FRANKFURTER, Counsel for the State of Oregon, assisted by JOSEPHINE GOLDMARK, Publication Secretary, National Consumers' League. Reprinted by National Consumers' League, 289 Fourth Avenue, New York.

Nobody now ever quotes or even so much as remembers the Majority Report of the British Poor Law Commission, while the Minority Report has become a familiar book of reference. It is safe to say that nobody will ever read the "brief for the plaintiff in error" in the case concerning the shorter work day now before the Supreme Court, but surely the brief for the defendant will serve as an encyclopedia of information concerning industrial fatigue and its results. This is the latest of the so-called "Brandeis briefs," the material for which was collected by Josephine Goldmark and the pleading of which is now in the hands of Felix Frankfurter, of the Harvard Law School. Like the earlier briefs it consists almost entirely of citations from all possible sources on the subject of fatigue and its effects, but it is fuller than the others because it is not confined to one sex; it covers all human beings.

To the reader trained in scientific, not legal, methods the effect of these two volumes is at first bewildering. One is puzzled over the selection of authorities and over their placing. The order is apparently not determined by dates, nor the space assigned according to importance. Indeed such men as Mosso, Moebius, Roth, Howell, Lee, are treated no differently from the obscurest factory inspector. Contrary to all the rules of medical writings, the man who quotes from an authority without adding anything new is given equal weight with the authority himself, and sometimes the quotation comes first. Medical writers would give only the original, and they would select his latest work and let the earlier ones go. Moreover, they would never cite an authority of dubious standing without stating that his work had been called into question.

Nevertheless, as one reads along one finds that an effect is produced and that it is cumulative, and one begins to suspect that this is the idea at the bottom and that it is psychologically sound. It seems impossible that any reader can fail to be convinced by the actual weight of this mass of evidence, made up as it is partly of gold and partly of scrap iron. It is to a great body of experience in many lands that the attention of

the court is called, in the confidence that the universality of this experience will prove its reasonableness.

The first section, on foreign legislation, covers only the most recent enactments; that on American legislation is complete. Certain interesting facts come to light here, such as that Portugal has adopted a ten-hour day and a sixty-hour week in all industrial establishments, Uruguay an eight-hour law for factories, while Illinois still permits a seventy-hour week even for women.

The most valuable part of the brief is devoted to the world's experience with the long work day, upon which the plea for legislation limiting hours of work is based. Arguments against such legislation are met by the testimony of men who have had direct experience with industry or who have studied the pathology of fatigue. For instance, to those who hold that labor is healthful, not pathological, the reply is given that when work exceeds the normal recuperative powers of the body fatigue does become pathological, is really the borderland of illness, and that though so far there is no positive test by which we can recognize this point, yet once it is passed a state of depression results with lowered resistance to disease.

Then come quotations showing that fatigue lessens the defensive powers of the body against infection, that it is the chief factor in functional nervous disease—neurasthenia is no longer peculiar to the well-to-do, but is increasing enormously among working people—that it is the basis of much eye trouble, that it increases accidents through the slackening of attention, and that the loss of moral restraint that comes in the wake of great fatigue increases alcoholism and vice.

It has been argued that workingmen are used to great and prolonged exertion through practice, but the answer given is that nervous energy cannot keep pace with muscular training and overstrain results in breakdown, as is seen sometimes among athletes. As I read this I recalled an item in a German medical journal soon after the outbreak of the war, telling how the military surgeons had been surprised to find that the soldiers who broke down with acute dilatation of the heart after forced exertion were for the most part men who in civil life had done heavy physical work.

The old familiar argument that decreased hours of work will mean more time spent in the saloon because the workman will not know how to spend his leisure, is answered by quotations from many lands and many periods. The writers during the forties in England, when apparently they had reached the point in legislation on hours that we have

just reached, speak in language strangely stately to our modern ears, but they say exactly what is still said today. The overlong work day is said to render "the great mass ignorant, prejudiced, addicted to coarse, sensual indulgence, and susceptible to being led into mischief and violence by every appeal to their passions or prejudices." Lord Macaulay warns England that she is rearing "a feeble and ignoble race of men, the parents of a still more feeble and ignoble progeny."

To refute the statement that shortening the work day means greatly increasing the cost of production a whole mass of testimony is adduced to show that the converse is true. This testimony comes from employers, and among the crowd of witnesses are some interesting figures: Robert Owen, the great pioneer in this field, pleading for common-sense and an open mind in words which, written one hundred years ago, might be used by any Consumers' Leaguer today; Ernst Abbe, the pioneer in Germany, reporting in the early days of this century that he had gradually, during a period of thirty-five years, reduced the day in his factory from twelve hours to eight, testing each step as he went and finding output not reduced. The pioneers in our country who testified to the same thing seem to be the Commonwealth Steel Company and the Solvay Process Company. Much of the evidence given is in favor of the eight-hour day, and obviously in a continuous industry the only choice is between two shifts of twelve hours and three of eight. There is an appalling list of American industries in which the twelve-hour shift still obtains.

The final argument is based on evidence concerning the effect of the short work day on the public weal, and on opinions already rendered by state courts and by the Supreme Court, which show a gradual shift in the attitude of the judiciary from a dread of this class of legislation and a devotion to the philosophy of individualism toward a new realism. To the majority of readers the part that will make the greatest impression will probably be that which shows the need of such legislation in the United States, for there are not many who realize how backward we have been in furnishing this form of protection to our working people.

ALICE HAMILTON

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Nationality in Modern History. By J. HOLLAND ROSE. New York: Macmillan, 1916. Pp. xi+202. \$1.25.

The fact of nationalism is so potent that history cannot longer overlook it, but it is so new that it is somewhat difficult to give it a